

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Browne	Team: Squad #8	CCRB Case #: 201509067	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 10/16/2015 7:51 PM	Location of Incident: En route to and inside the 40th Precinct stationhouse	Precinct: 40	18 Mo. SOL 4/16/2017	EO SOL 4/16/2017	
Date/Time CV Reported Sun, 10/18/2015 11:53 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 10/23/2015 12:06 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Fernando Rodriguez	27943	954282	040 PCT
2. POF Margarita Negron	00791	949385	040 PCT
3. POM Michael Nesto	03785	954173	040 PCT
4. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Rafael Perez	13468	935500	040 PCT
2. SGT Willie Briggs	00362	933555	040 PCT
3. POF Rossi Mata	05887	940437	040 PCT
4. SGT Alfonso Villacres	02411	943928	040 PCT
5. POM Michael Jordan	10066	952907	040 PCT
6. POM Robert Mciver	13892	951989	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Fernando Rodriguez	Force: PO Fernando Rodriguez tightly handcuffed § 87(2)(b)	
B.POM Michael Nesto	Discourtesy: PO Michael Nesto spoke discourteously to § 87(2)(b)	
C. An officer	Force: An officer used physical force against § 87(2)(b)	
D.POM Michael Nesto	Abuse: PO Michael Nesto did not obtain medical treatment for § 87(2)(b)	
E. An officer	Abuse: An officer did not obtain medical treatment for § 87(2)(b)	
F.POF Margarita Negron	Abuse: PO Margarita Negron strip-searched § 87(2)(b)	
G. An officer	Abuse: An officer strip-searched § 87(2)(b)	
H.POM Fernando Rodriguez	Force: Fernando Rodriguez used physical force against § 87(2)(b)	
I.POM Fernando Rodriguez	Force: PO Fernando Rodriguez used a chokehold against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
J.POM Fernando Rodriguez	Force: PO Fernando Rodriguez restricted the breathing of § 87(2)(b)	

Case Summary

At approximately 7:51 p.m. on October 16, 2015, officers identified through investigation as PO Fernando Rodriguez, PO Rafael Perez, Sgt. Willie Briggs, PO Robert McIver, PO Michael Nesto, PO Michael Jordan, and PO Fernando Nunez, all of the 40th Precinct, responded to § 87(2)(b) in the Bronx. Earlier that day, § 87(2)(b) Ortiz had contacted the police to report threats made to her by a couple, § 87(2)(b) and § 87(2)(b) who lived in § 87(2)(b) of the above location. Leading the investigation, PO Rodriguez arrested both § 87(2)(b) and § 87(2)(b) inside the building. As he applied the handcuffs on § 87(2)(b) he allegedly closed them so tightly that they caused § 87(2)(b) wrists to bleed scar (**Allegation A**).

Although both civilians verbally disputed the arrests, they were handcuffed without resisting and transported to the 40th Precinct stationhouse in two separate vehicles. PO Nesto and PO McIver drove § 87(2)(b) who loudly complained about the arrest the entire trip. At one point, PO Nesto allegedly told her to “Shut the fuck up” (**Allegation B**), prompting § 87(2)(b) to repeat the same back to him. As she did so, an unidentified officer sitting next to her in the back of the car allegedly elbowed her in the face, chipping her top right front tooth and causing a cut on her inner lip (**Allegation C**). § 87(2)(b) allegedly then stated that she was going to the hospital, at which point PO Nesto stated, “I don’t give a fuck. I’m not your arresting officer” (**Allegation D**).

After arriving at the stationhouse, § 87(2)(b) allegedly saw § 87(2)(b)’s mouth injuries and demanded medical assistance from an unidentified female officer. That officer allegedly refused to even look at the injuries or provide her with any assistance (**Allegation E**). After being logged in at the front desk, § 87(2)(b) was escorted into the bathroom by PO Margarita Negrón of the 40th Precinct and another unidentified female officer. In addition to the standard procedure of removing a prisoner’s belt and shoelaces, PO Negrón and the unidentified officer allegedly had § 87(2)(b) remove her bra and panties as well as made her squat (**Allegations F and G**).

After § 87(2)(b) was searched, she was removed to the holding cells while § 87(2)(b) was escorted into the bathroom by PO Perez and PO Jordan. PO Rodriguez followed shortly behind and allegedly grabbed § 87(2)(b) by the right side of the head and slammed it into the wall, causing an indentation in the sheetrock alongside an already pre-existing crack, but causing no visible injuries (**Allegation H**). Immediately thereafter, PO Jordan took § 87(2)(b) to the ground, allegedly enabling PO Rodriguez to place his boot down onto the right side of his face and neck. PO Rodriguez then allegedly twisted his boot, causing several scratches on neck and jawline (**subsumed within Allegation H**). Because of the placement of PO Rodriguez’ foot on his neck, § 87(2)(b) breathing was allegedly partially restricted his breathing for as long as one minute (**Allegations I and J**). Amidst the scuffle, multiple other officers entered the bathroom and instructed PO Rodriguez to leave, allowing § 87(2)(b) to calm down so that his belt and shoelaces could be removed. § 87(2)(b) was subsequently removed to a holding cell next to § 87(2)(b). Both § 87(2)(b) and § 87(2)(b) were ultimately charged with § 87(2)(b).

Mediation, Civil, and Criminal Histories

- Given that both complainants were arrested, this case was investigated.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) §§ 86(1)(3)&(4) § 87(2)(c)

- § 87(2)(b) §§ 86(1)(3)&(4) § 87(2)(c)
- On § 87(2)(b), § 87(2)(b) and § 87(2)(b) filed a claim with the City of New York requesting \$5,000,000 for unspecified personal injury, time spent in custody, pain and suffering, loss of quality and/or of enjoyment of life (see Board Review #3).

Civilian and Officer CCRB Histories

- PO Rodriguez has been a member of the NYPD for two years and has been a subject in two prior CCRB cases involving eight FADO allegations (see Board Review #4). Allegations of a question and a retaliatory summons were both substantiated against him as part of case #201501745, for which he received command discipline B on both counts. Two of his previous allegations have been for force, though both were unsubstantiated.
- PO Nesto has been a member of the NYPD for two years and has been a subject in two prior CCRB cases involving three FADO allegations (see Board Review #5).
- PO Negron has been a member of the NYPD for five years and this is the first CCRB complaint against her (see Board Review #6).
- § 87(2)(b) has filed one prior CCRB complaint § 87(2)(b) § 87(2)(b) has also filed one prior CCRB complaint § 87(2)(b) (see Board Review #8).

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) alleged that while being transported to the stationhouse, an officer whom she described as a uniformed Hispanic male in his 30's who stood 5'6", weighed 200 pounds, and had black hair sat in the back of the car with her and elbowed her in the mouth. Both PO Nesto and PO McIver, who closely match the descriptions she provided of a white male driver and black male front passenger, were partnered that day and acknowledged transporting § 87(2)(b) back to the stationhouse. However, both officers stated that they were the only two officers in the vehicle and they did not believe any officer accompanied them, specifically by sitting in the back with § 87(2)(b).

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Separately, § 87(2)(b) alleged that after being taken to the stationhouse, he observed his wife's injuries and demanded that a uniformed white female in a white shirt examine her, which she refused to do so. The 40th Precinct tour 3 roll call from that day (see Board Review #9) showed that the only female supervisor on duty was Sgt. Kathryn Hennessey, who was assigned as the conditions sergeant. § 87(2)(g)

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Lastly, § 87(2)(b) identified PO Negron by name as one of the two female officers that strip-searched her. However, she did not know the name of the second female and only described her as a thirty-year-old uniformed black female who stood approximately 5'4", weighed 160 pounds, was heavysset, and had black and blond two toned hair wrapped in a bun. No officer interview was able to identify any officer matching that description, even after reviewing the roll call. Additionally, the roll call shows that no black female officers from the 40th Precinct were working at the time of the incident. PO Jody Mitchell, who works at the 40th Precinct and was named as being present by PO Rodriguez, was interviewed (see Board Review #10). However, she denied being present, stating that she ended her tour twelve hours earlier and did not work again for another three days, which is reflected in her memo book (see Board Review #11). § 87(2)(g)

§ 87(2)(g)

Allegation A—Force: PO Fernando Rodriguez tightly handcuffed § 87(2)(b)

Allegation C—Force: An officer used physical force against § 87(2)(b)

Allegation D—Abuse of Authority: PO Michael Nesto did not obtain medical treatment for

§ 87(2)(b)

Allegation E—Abuse of Authority: An officer did not obtain medical treatment for § 87(2)(b)

§ 87(2)(b)

During a telephone statement to IAB on October 17, 2015 (see Board Review #12), § 87(2)(b) reported injuries to his head and neck, as discussed below. However, he made no mention of any wrist or other injuries that resulted from his handcuffing, and he explicitly stated that he refused medical attention from the officers because he wanted to stay with § 87(2)(b) throughout processing. He made no mention of any injuries sustained by § 87(2)(b) or refusals by

officers to provide her medical attention. Additionally, at one point during the call, § 87(2)(b) took the phone and explicitly stated to IAB that she did not sustain any injuries as a result of this incident.

During his in-person statement at the CCRB, however, § 87(2)(b) alleged (see Board Review #13) that when PO Rodriguez handcuffed him, he applied the cuffs so tightly that they cut deeply into his wrists, causing bleeding and scarring as seen in photographs reportedly taken one day after the incident on October 17, 2015 (see Board Reviews #14 and #15), as well as at the CCRB on November 4, 2015 (see Board Reviews #16 and #17). § 87(2)(b) specifically stated that the diagonal scar located over one inch above his left wrist line was a result of the handcuffs. § 87(2)(b) stated that he refused offers of medical attention for himself because he wanted to stay with § 87(2)(b) throughout processing. § 87(2)(b) medical records (Privileged Documents) revealed that he went to the § 87(2)(b) on § 87(2)(b) complaining only of ear and neck pain. He made no complaint about his wrists, nor did the records ever mention injuries or marks on his wrists.

At no point during her in-person CCRB statement (see Board Review #18) did § 87(2)(b) mention § 87(2)(b) sustaining any wrist injuries as a result of being handcuffed or otherwise. However, § 87(2)(b) alleged that while she was being transported to the 40th Precinct stationhouse, an unidentified officer sitting beside her in the back of the vehicle elbowed her in the mouth after she told PO Nesto to “shut the fuck up.” She alleged that the blow caused a chip on her upper right front tooth (see Board Review #19) and a swollen cut on her inner lip. § 87(2)(b) did not provide any photographs of these injuries taken prior to the date of her interview, at which time the cut in her mouth had reportedly healed. She also clarified that the left side of the tooth had previously been chipped and repaired with a filling, accounting for the difference in coloration seen in the above photograph. § 87(2)(b) stated that she did not realize her tooth was chipped until after being released from police custody and that she had not sought any dental or medical treatment to date.

Nevertheless, she further alleged that after being struck, she stated that she was going to the hospital, prompting PO Nesto to tell her, “I don’t give a fuck. I’m not your arresting officer.” § 87(2)(b) maintained that after arriving at the stationhouse, she demanded medical attention from PO Rodriguez, who informed her that her processing would take longer if she chose to go to the hospital. As a result, § 87(2)(b) voluntarily declined medical attention. Meanwhile, § 87(2)(b) stated that upon hearing that § 87(2)(b) had been struck in the mouth during transport and seeing the cracked tooth and laceration, he demanded from an unidentified female sergeant in the stationhouse that she examine her. § 87(2)(b) alleged that the officer made no effort to do so. § 87(2)(b) made no mention of this female officer in her statement. The command log (see Board Review #20) did not list any injuries for either § 87(2)(b) or § 87(2)(b).

PO Rodriguez (see Board Review #21), PO Perez (see Board Review #22), PO Nesto (see Board Review #23), PO McIver (see Board Review #24), PO Jordan (see Board Review #25), and Sgt. Briggs (see Board Review #26), all of whom were at the scene of the arrest, were consistent in that there was no physical altercation while § 87(2)(b) was being handcuffed. No officer ever saw any wrist or other injuries on § 87(2)(b) body, or heard him complain about his handcuffs or any such resulting pain. Similarly, PO Nesto and PO McIver both believed that no

officer was sitting beside § 87(2)(b) in the car and they both denied that any officer used any force against her, including by elbowing or striking her in the mouth. Neither officer was at any point aware of § 87(2)(b) missing part of her tooth.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Allegation B—Discourtesy: PO Michael Nesto spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that while being transported to the 40th Precinct stationhouse, she was crying and yelling, prompting PO Nesto to tell her, “Shut the fuck up.” § 87(2)(b) stated that she reciprocally told PO Nesto to “Shut the fuck up,” at which point the unidentified officer struck her, as discussed above.

PO Nesto and PO McIver both confirmed that § 87(2)(b) was loudly disputing her arrest as they transported her to the stationhouse, though neither believed that she was ever crying. PO Nesto maintained that he told § 87(2)(b) that she would have to handle the matter in court before turning up the radio to drown out her voice. PO Nesto and PO McIver both denied telling her to be quiet, stating, “Shut the fuck up,” or using any profanity while speaking to her.

§ 87(2)(g)

[REDACTED]

Allegation F—Abuse of Authority: PO Margarita Negrón strip-searched § 87(2)(b)

Allegation G—Abuse of Authority: An officer strip-searched § 87(2)(b)

§ 87(2)(b) alleged that after arriving at the stationhouse, PO Negrón and another unidentified officer escorted her into the bathroom and searched her by having her lift up her bra, lower her panties, and squat. She maintained that both her breasts and genitalia were exposed as a result. No drugs or other objects were recovered as a result of the search.

PO Negrón (see Board Review #27) maintained that when § 87(2)(b) was brought into the stationhouse for processing, she and multiple other officers were outside painting the gate pink for Breast Cancer Awareness. However, as she was the domestic violence officer that day, PO Negrón arrested a walk-in and spent the night processing her own prisoner while § 87(2)(b) and § 87(2)(b) were lodged in the holding cells. PO Negrón explicitly denied ever searching or strip-searching § 87(2)(b) or observing any other officer do so. However, PO Negrón acknowledged that at one point she did escort § 87(2)(b) from the cells to the bathroom when she stated she needed to use it. However, PO Negrón maintained that she never entered the bathroom with § 87(2)(b) and instead stayed outside until she was finished.

§ 87(2)(g)

Allegation H—Force: Fernando Rodriguez used physical force against § 87(2)(b)

Allegation I—Force: PO Fernando Rodriguez used a chokehold against § 87(2)(b)

Allegation J—Force: PO Fernando Rodriguez restricted the breathing of § 87(2)(b)

§ 87(2)(b) stated over the phone to IAB that prior to being brought into the bathroom to be searched, PO Rodriguez was laughing, putting on gloves, and making provocative comments such as that something was going to go down in the bathroom. § 87(2)(b) also stated that he told PO Rodriguez that if he was going to hit him, he should take the gloves off and then see what happened. However, during his in-person statement, he refused to answer multiple questions about his conversation with PO Rodriguez prior to entering the bathroom and only stated that he yelled for PO Rodriguez to get out of his face.

Nevertheless, it is undisputed that PO Perez and PO Jordan then escorted him into the bathroom with PO Rodriguez following shortly behind. § 87(2)(b) alleged that within seconds of entering, PO Rodriguez grabbed the back of his head and pushed it forward approximately one foot into the sheetrock wall in front of him. The impact allegedly caused temporary pain as well as left an indentation in the wall, though § 87(2)(b) observed a preexisting crack nearby on the same wall. § 87(2)(b) reportedly yelled for PO Rodriguez to get off of him before PO Jordan used muscular force to bring him to the ground so that he landed on his left side. Although § 87(2)(b) did not alleged any injury as a result of the takedown, he maintained that PO Rodriguez then placed one of his boots down onto the right side of his face and neck and twisted

with his full body weight, pressing downwards for approximately one minute. § 87(2)(b) maintained that the pressure on his neck also caused a slight restriction of breathing, though he could still talk. § 87(2)(b) alleged that the twisting of the boot caused swelling, bruising, and three one-inch-long scrapes on the right side of his face and neck, reportedly shown in photographs taken one day after the incident on October 17, 2015 (see Board Review #28). § 87(2)(b) denied resisting in any way and maintained that amidst the altercation, multiple other officers entered the bathroom and instructed PO Rodriguez to leave, which he did. The remaining officers then reportedly proceeded to search him as planned before bringing him to a cell next to § 87(2)(b). § 87(2)(b) maintained that he was yelling loudly inside the bathroom throughout the altercation. § 87(2)(b) stated that she did not hear any yelling or noise coming from the bathroom, though she did observe three to four scratches on one side of his neck as well as redness on his ear on the same side.

§ 87(2)(b) never sought medical attention while in custody, but his medical records from § 87(2)(b) showed that § 87(2)(b) complained of stiffness and soreness on his neck and ear as the result of a cop pressing his boot down onto him. § 87(2)(b) was diagnosed with a contusion to his left ear and a neck strain before being discharged with a prescription for Tylenol. There was no mention of scratches or cuts on § 87(2)(b) face.

§ 87(2)(g) PO Rodriguez, PO Perez, and PO Jordan all acknowledged escorting § 87(2)(b) with PO Rodriguez following behind without making contact. PO Perez acknowledged conducting a limited search by having him remove his shoelaces and belt but he did not recall any physical altercation as described above and maintained that he left the bathroom before the search was completed. However, PO Rodriguez stated that immediately upon entering the bathroom, § 87(2)(b) lunged forward and slammed the front of his own head into the sheetrock. PO Rodriguez denied ever making any physical contact with § 87(2)(b) while in the bathroom, as well as denied that any officer pushed or used any force against § 87(2)(b) that caused his head to collide with the wall. PO Rodriguez confirmed that there was already an existing crack on the wall, but that § 87(2)(b) actions caused additional damage. PO Rodriguez acknowledged that § 87(2)(b) was irate and yelling at him, so he left the bathroom and allowed other officers to handle it. However, he did not recall § 87(2)(b) being taken to the ground and denied that he or any other officer placed his foot down onto any part of his body such as his neck or throat. PO Rodriguez denied taking any action that could have restricted § 87(2)(b) breathing.

PO Jordan stated that § 87(2)(b) was pushing and pulling as they entered the bathroom, and that he smacked one fist into the opposite palm in a threatening manner. Although he did not definitively recall, PO Jordan also stated that § 87(2)(b) slammed his own head into the wall shortly after entering while denying that he or any other officer used any force to propel him into the wall. PO Jordan maintained that § 87(2)(b) back was facing the wall at the time, so he believed that it was the back of his head that made contact. PO Jordan was aware of prior damage to the wall, though he stated that he did not know if any new damage resulted from this incident. PO Jordan stated that in order to prevent further injury, he immediately used muscular force to take § 87(2)(b) to the ground and held him steady by the shoulders. PO Jordan denied that he or any other officer made contact with § 87(2)(b) head or neck. PO Jordan recalled seeing officers' boots around him as he struggled to gain control over § 87(2)(b) but he did not recall any officer placing his foot down onto his neck or applying any pressure that could have

restricted his breathing. PO Jordan maintained that it was only after PO Rodriguez left the room that § 87(2)(b) calmed down. All of the officers interviewed denied seeing any of the scratches seen in above photographs.

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Squad: ____

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date